[ORIGINAL CIVIL JURISDICTION.]
MILLS, J.
October, 14.

ONG KIN HONG v. ONG CHO TEK AND OTHERS.

[SINGAPORE CIVIL SUIT No. 579 of 1933.]

Partnership action — forum conveniens — stay of Proceedings in Foreign Court.

In considering the propriety of entertaining proceedings in the Courts of the Colony when such proceedings concern a partnership carrying on business both in the F.M.S. and the Colony, the determining factor is the comparative advantage in furtherance of justice to all parties.

Adjourned Summons.

The Plaintiff was resident in the Colony of the Straits Settlements and was a partner in a partnership firm carrying on business in the Colony and in the Federated Malay States. He commenced a partnership dissolution action, joining all the other partners as Defendants. The 1st Defendant (the managing partner) moved the Court to set aside all the proceedings on the ground that the litigation ought to proceed in the Federated Malay States. In fact no proceedings had or have ever been commenced in the Federated Malay States.

E. A. Stevens and *Walters* for the 1st Defendant.

F. A. Briggs for the Plaintiff.

C. da Silva for the 5th and 6th Defendants.

Cur. Ad. Vult.

MILLS, J.—The question to be determined on this interlocutory application was whether the action should be allowed to proceed in Singapore or whether the proceedings should be set aside on the ground that the Federated Malay States is the proper forum.

A large number of arguments were brought forward on each side; beyond saying that I rejected the contention of the first defendant that the fourth and seventh defendants were merely subsidiary defendants, I do not think I need set out specificallly the arguments which I felt constrained to reject.

I decided the matter on "the comparative advantage in furtherance of justice to all parties" (cf. *The Hagen*) (1908) P. 189 at p. 204; (1908) 24 T.L.R. 411 and I held that the Federated Malay States was the proper forum.

I attached weight to the following arguments put foward on behalf of the plaintiff and the fourth, fifth, sixth and seventh defendants :—

(a) the partnership has one branch at Singapore,
(b) assets in the Colony are valued at $30,000,
(c) the plaintiff and the fourth and seventh defendants reside in the Colony,
(d) five out of eight partners (*viz.* the plaintiff and the fourth, fifth, sixth and seventh defendants) desire the litigation to proceed in Singapore,
(e) the plaintiff will be prejudiced if further time elapses before his interests can be protected by legal process.

I attach weight to the following arguments put forward on behalf of the first, second and third defendants:—

(1) the partnership has five branches in the Federated Malay States,
(2) assets in the Federated Malay States are valued at $135,000 (or, if no locality can be attributed to a debt of $65,000 secured on land in Johore, at $70,000) the only landed property (valued at $30,000) belonging to the partnership is situated in the Federated Malay States,
(3) the first, second, third, fifth and sixth defendants reside in the Federated Malay States,
(4) three out of eight partners (*viz.* the first, second and third defendants) are opposed to the litigation proceeding in Singapore,
(5) the first, second and third defendants together own 60% of the shares in the partnership,
(6) the business was originally commenced in the Federated Malay States,
(7) the first, second and third defendants are actually engaged in the partnership business,
(8) the first defendant is the *de facto* controller of the business, having the closest knowledge of its working and finance,
(9) the largest branch is in the Federated Malay States,
(10) the books are in the Federated Malay States,
(11) the Court of the Federated Malay States can wind up the business more effectively than the Court of the Colony.

Arguments (a) (b) and (c) are more than off-set by arguments (1) (2) and (3) respectively.

Argument (d) is off-set by the combination of arguments (4) and (5); but if it is not, the time of the first, second and third defendants is,

on the evidence, of greater value than the time of the other five partners (the plaintiff is not shown to have any valuable occupation, the fourth defendant is an infant and the seventh a woman, though the fifth and sixth defendants are actively engaged in the business).

No reason is given why the fifth and sixth defendants, who reside in the Federated Malay States, desire the litigation to proceed in Singapore: it is therefore impossible to determine the force of their reasons.

Argument (e), in my opinion, ought not to have much weight attached to it, as it should be possible within 2 weeks to obtain protection of the plaintiff's interest by the appointment of a Receiver, should the circumstances warrant it, by the Court of the Federated Malay States; in fact, I doubt whether any weight ought to be attached to this argument, if on other grounds it is just that the litigation should proceed in the Federated Malay States; in any case argument (e) is, in my opinion, of less weight than the combined effect of arguments (6) (7) (8) (9) (10) and (11).

The general rule is that defendants have the right to be sued in the country where they reside. If there is any doubt, it ought to be resolved in favour of the foreigner *(The Hagen)* (1908) P. 189 at 204.

Order accordingly.

Solicitors for the 1st Defendant—*Allen & Gledhill.*

Solicitors for the Plaintiff—*Braddell Bros.*

Solicitor for the 5th and 6th Defendants—*Claude da Silva.*

[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.
April 17, 1935.

HAJEE AMEER BIN HAJEE MOHAMED SALLEH PITALOLO.....Plaintiff.

vs.

TAN KENG NEO.....Defendant.

[SINGAPORE SUIT No. 710 of 1933]

Garnishment—Civil Procedure Rules 1934 O. XLIII.

A Judgment was obtained by the Plaintiff against the Defendant and in respect of that Judgment a Writ of Seizure and Sale was issued in the lifetime of the Defendant. The Defendant died. Subsequently the Judgment Creditor caused to be issued first a garnishment notice and that a garnishment summons addressed to a person having in his hands the balance of certain insurance moneys payable on the death of the Judgment debtor and actually received by the garnishee shortly thereafter. Until after the issue of the garnishment summons no order was made adding any person to represent the estate of the deceased Judgment debtor.

Held, that no execution had in fact been levied until after the death of the Judgment debtor and that the Judgment creditor was not entitled to an order against the garnishee who must hold the money on behalf of the estate of the Judgment debtor and pay it over to the legal representative of such estate when appointed.

Summons in Chambers.

Cobbett for Judgment Creditor (Plaintiff).

Johannes for Debtor.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

TERRELL, J.—In this case the plaintiff recovered judgment against the defendant on the 2nd October, 1933, and on the 13th March, 1934, a Writ of Seizure and Sale was issued. The property of the defendant seized under this writ was certain immovable property in Malacca. I understand that this has been sold but that the net proceeds were not sufficient to satisfy the judgment debt of which a balance remains unpaid.

On the 23rd October, 1934, the defendant died. The deceased had taken out a policy of life assurance which had been charged to R.M.P.A. Ramasamy Chettiar. The Chettiar has received the full amount of the insurance moneys and after satisfaction of his debt a balance remains in his hands. The judgment creditor has attempted to seize this balance by means of a garnishment notice issued on the 14th February, 1935, and this Garnishment Summons was issued on the 11th March, 1935. No Letters of Administration have been taken out to the estate of the deceased but by an order made on the 5th April, 1935, his widow Chew Aye Neo was appointed under Order 16 Rule 42, to represent his estate for the purpose of these proceedings. The issue is between the judgment creditor and the creditors of the estate of the defendant which, I understand, is insolvent.

The plaintiff has argued that all the property of the defendant was seized under the Writ of Seizure and Sale, that under our law this would include property seizable under a garnishment notice and that it is the duty of the Sheriff to proceed with the execution as he would in England under a Writ of *Fi. Fa.* notwithstanding that the death of the judgment debtor has intervened (see *Hailsham* Vol. XIV p. 17 par. 30). In my opinion this argument is founded on a false analogy, the distinctions between the local Writ of Seizure and Sale and the English Writ of *Fi. Fa.* being very material.

Under the English Common Law a Writ of *Fi. Fa.* bound all the goods of a debtor within the